

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1758

96TH GENERAL ASSEMBLY

5552L.03P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To amend chapter 452, RSMo, by adding thereto one new section relating to rights of persons with parental relationships.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 452, RSMo, is amended by adding thereto one new section, to be known as section 452.398, to read as follows:

**452.398. 1. It is the goal of this section to protect the psychological, emotional, and physical well-being of Missouri children by ensuring continuing interaction between a minor child and those persons with whom the minor child shares a substantial bond regardless of such person's biological connection to the minor child. Nothing in this section shall be construed or is intended to affect the procedure for termination of parental rights under chapter 211. Nothing in this section shall be construed or intended to revive the rights of a natural parent whose rights have previously been terminated under chapter 211.**

**2. As used in this section, the following terms shall mean:**

**(1) "Detrimental impact to the minor child", includes but is not limited to circumstances that may cause psychological, emotional, or physical harm to a minor child;**

**(2) "Natural parent", a biological or legal parent whose rights have not been terminated;**

**(3) "Ongoing relationship", a parent/child relationship with substantial continuity that has existed or did exist for at least one year;**

**(4) "Parent/child relationship", a relationship that exists or did exist between a minor child and a person other than a natural parent in which the person claiming such relationship has:**

**(a) Performed the duties of a parent and provided for the minor child's basic physical needs for food, clothing, shelter, and incidental necessities; and**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

20           (b) Provided the minor child with necessary care, education, structure, and  
21 discipline; and

22           (c) Developed and sustained a relationship with the minor child through  
23 interaction, companionship, interplay, and mutuality that fulfilled the minor child's  
24 psychological and emotional needs.

25           3. Any person who has a parent/child relationship with a minor child and who is  
26 not the minor child's natural parent may petition a court of competent jurisdiction under  
27 section 452.740 either by independent petition or by intervention in a pending action,  
28 including but not limited to an action pending in the juvenile division of a circuit court, to  
29 enter a judgment establishing custody and visitation rights to sustain and protect an  
30 ongoing relationship with the minor child. An action under this section may be filed only  
31 if:

32           (1) At least one of the natural parents is deceased; or

33           (2) At least one of the natural parents is unknown; or

34           (3) The whereabouts of at least one of the natural parents is unknown and  
35 unascertainable for a period of one year; or

36           (4) The parental rights of at least one biological parent have been terminated; or

37           (5) The remaining parent has not had an ongoing parent/child relationship with the  
38 minor child in question for a period of one year prior to the filing of a petition under this  
39 section.

40           4. To qualify under this section, the petitioner or intervenor:

41           (1) Is or was married to the minor child's natural parent;

42           (2) Is or was named on the birth certificate of the minor child at some point during  
43 the minor child's life and the parental rights have not previously been terminated under  
44 sections 211.442 to 211.490; or

45           (3) Materially relied upon a natural parent's representation that the petitioner or  
46 intervenor was or could be the minor child's natural parent.

47           5. The petitioner or intervenor shall establish by a preponderance of the evidence  
48 that an ongoing parent/child relationship exists or did exist. In determining whether such  
49 a relationship exists or did exist, the court shall consider all relevant factors, including:

50           (1) The age of the minor child;

51           (2) The minor child's mental and emotional maturity;

52           (3) Whether the minor child holds or did in the past hold a belief that the petitioner  
53 or intervenor is his or her parent;

54           (4) The duration and extent of the minor child's interaction with the petitioner or  
55 intervenor prior to the filing of the petitioner's or intervenor's action;

56           (5) Whether a natural parent fostered, condoned, or promoted the relationship  
57 between the minor child and the petitioner or intervenor;

58           **(6) The extent to which the petitioner or intervenor has provided for the minor**  
59 **child's support, health, education, and welfare;**

60           **(7) The extent to which the petitioner or intervenor has performed the role of**  
61 **parent;**

62           **(8) The extent to which the petitioner or intervenor has fulfilled the minor child's**  
63 **psychological needs for a parent;**

64           **(9) Whether the petitioner or intervenor, the natural parent, and the minor child**  
65 **interacted with their community and third parties as a family.**

66           **6. In any proceeding initiated under this section, there is a rebuttable presumption**  
67 **that the natural parent acts in the minor child's best interests. In determining whether the**  
68 **presumption has been rebutted and whether to award custody or visitation rights over the**  
69 **objection of a natural parent, the court shall consider the psychological injury to the child**  
70 **resulting from a discontinuation of the relationship between the child and petitioner or**  
71 **intervenor and may consider factors including, but not limited to:**

72           **(1) Whether the petitioner or intervenor is or has been a primary caretaker of the**  
73 **minor child;**

74           **(2) Whether the natural parent has fostered, condoned, or promoted the**  
75 **relationship between the minor child and the petitioner or intervenor;**

76           **(3) The duration and extent of the minor child's interaction with the petitioner or**  
77 **intervenor prior to the filing of the petitioner's or intervenor's action;**

78           **(4) The extent to which the petitioner or intervenor has provided for the minor**  
79 **child's support, health, education, and welfare;**

80           **(5) The extent to which the petitioner or intervenor has performed the role of**  
81 **parent;**

82           **(6) The extent to which the petitioner or intervenor has fulfilled the minor child's**  
83 **psychological needs for a parent;**

84           **(7) Whether the natural parent has unreasonably denied or limited contact between**  
85 **the minor child and the petitioner or intervenor;**

86           **(8) Whether the natural parent is unwilling or unable to adequately care for the**  
87 **minor child;**

88           **(9) The character, background, and parenting abilities of the parties.**

89           **7. If the court determines that a parent/child relationship exists and the parental**  
90 **presumption in subsection 6 of this section has been rebutted by a preponderance of the**  
91 **evidence, the court may grant visitation rights to the petitioner or intervenor in order to**  
92 **maintain a meaningful and continuing relationship with the minor child, if to do so is in**  
93 **the best interests of the child. The court may determine temporary custody or temporary**  
94 **visitation during the pendency of any proceeding pending entry of a final order.**

95           **8. If the court determines that a parent/child relationship exists or did exist and the**  
96 **parental presumption in subsection 6 of this section has been rebutted by clear and**  
97 **convincing evidence, the court may grant custody or visitation rights to the petitioner or**  
98 **intervenor in order to maintain a meaningful and continuing relationship with the minor**  
99 **child, if to do so is in the best interests of the child and the court finds that:**

100           **(1) The natural parent is unfit, unsuitable, or unable to be a custodian; or**

101           **(2) The welfare of the child requires the granting of such rights; or**

102           **(3) The natural parent is listed in the central registry, as defined in section 210.110.**

103  
104 **The court may order temporary visitation or contact rights under this subsection pending**  
105 **a final order.**

106           **9. If the court determines that custody or visitation between the minor child and**  
107 **the petitioner or intervenor is appropriate, the court may establish a parenting plan in**  
108 **accordance with subsection 8 of section 452.310 after consideration of the provisions of**  
109 **section 452.375, including an obligation of support pursuant to section 452.340.**

110           **10. The presumption described in subsection 6 of this section shall not exist in any**  
111 **action for modification of a judgment granted under this section.**

112           **11. The custody and visitation provisions of this section shall apply only to periods**  
113 **of visitation or custody accruing subsequent to the filing of a petition under this section.**  
114 **This subsection shall not, however, limit the court's ability to consider evidence of past**  
115 **circumstances of the parties and the child, or to find that a parent/child relationship exists**  
116 **or existed prior to the effective date of this section.**

117           **12. Notice of any action under this section shall be given in a manner prescribed**  
118 **by law to the natural parent or parents, to any person who has custody of the minor child**  
119 **in question, and to any person the petitioner or intervenor knows would qualify under**  
120 **subsection 4 of this section.**

121           **13. If a military parent is required to be separated from a child due to deployment,**  
122 **a court shall not enter a final order under this section until ninety days after the**  
123 **deployment ends. Deployment or the potential for future deployment of a military parent**  
124 **shall not constitute grounds sufficient to support a custody or visitation order under this**  
125 **section.**

126           **14. If a parent is required to be separated from a child due to employment, and the**  
127 **parent supports the child on an ongoing basis, such separation shall not constitute grounds**  
128 **sufficient to support a custody or visitation order under this section.**

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